

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TREMAYNE DURHAM,

Plaintiff,

v.

B. DAVIS, et al.,

Defendants.

Civil Action No. 19-19126 (MAS) (TJB)

MEMORANDUM ORDER

This matter comes before the Court on Plaintiff Tremayne Durham's motion seeking leave to proceed *in forma pauperis* on appeal. (ECF Nos. 15-16.) Pursuant to Federal Rule of Appellate Procedure 24(a)(1), this Court may grant a plaintiff *in forma pauperis* status on appeal only where the plaintiff shows, in the detail required by Form 4 of the Appendix of Forms, that he is unable to pay or to give security for the fees and costs on appeals, and states the issues that he intends to present on appeal. Under Local Appellate Rule 24.1(a), however, in those cases where 28 U.S.C. § 1915(b) applies, such as in this civil rights matter, a plaintiff must submit "an affidavit or poverty that includes the amount in the prisoner's prison account," "a certified copy of the prison account statement(s) . . . for the 6 month period immediately preceding the filing of the notice of appeal," and "a signed form authorizing prison officials to assess and deduct the filing fees in accordance with 28 U.S.C. § 1915(b)."

In this matter, although Plaintiff has submitted a notice of appeal, he has not provided a list of the issues he wishes to raise on appeal. (*See* ECF No. 13.) Likewise, although Plaintiff has submitted an affidavit of poverty and a certified account statement, his account statement indicates that, over the last six months, he has maintained a prison account balance well in excess of \$1,000. While that amount of money does not per se suggest that Plaintiff is not "unable to pay" the filing

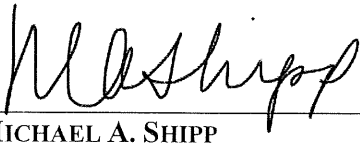
fee, without some explanation from Plaintiff as to why he cannot use that money to pay the appellate filing fee, especially when considered in light of the fact that many of his basic material needs are provided by the prison in which he is detained, this Court cannot conclude that Plaintiff has clearly shown his inability to pay the appellate filing fee. Plaintiff's motion seeking leave to appeal *in forma pauperis* must therefore be denied without prejudice. Plaintiff is granted leave to file a new motion seeking leave to proceed *in forma pauperis* on appeal addressing these two issues within thirty days.

IT IS THEREFORE on this 13th day of August, 2021, **ORDERED** that:

1. The Clerk of the Court shall re-open this matter for the purposes of this Order only.
2. Plaintiff's motion seeking leave to proceed *in forma pauperis* on appeal (ECF Nos. 15-16) is **DENIED WITHOUT PREJUDICE**.
3. The Clerk of the Court shall provide Plaintiff with a blank copy of an Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis¹.
4. Plaintiff is given leave to file another motion seeking leave to proceed *in forma pauperis* on appeal within thirty (30) days of the date of this Order.
5. If Plaintiff wishes to file a new motion seeking leave to proceed *in forma pauperis* on appeal, he must do so by filing a new motion accompanied by a statement of the issues he wishes to raise on appeal and an explanation of why he cannot use the money in his prison account to pay the applicable filing fee.

¹ See http://www2.ca3.uscourts.gov/legacyfiles/ifp_affidavit.pdf.

6. The Clerk of the Court shall serve a copy of this Order upon Plaintiff by regular mail and shall **CLOSE** the file.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE